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| 22925 7590 10/24/2007 PHARMACEUTICAL PATENT ATTORNEYS, LLC 55 MADISON AVENUE 4TH FLOOR MORRISTOWN, NJ 07960-7397 | | | EXAMINER RAHMANI, NILOOFAR | |
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Art Unit: 1625



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/516,500
Filing Date: December 02, 2004
Appellant(s): HANCKE OROZCO ET AL.

Mark Pohl
For Appellant

**SUPPLEMENTAL
EXAMINER'S ANSWER**

This is in response to the Reply appeal brief filed mailed on August 29, 2007 responding to the Examiner's Answer.

(1) Real Party in Interest

The real party in interest is HP Ingredients, Inc., a Florida corporation.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of invention is correct with exception of:

- (1) The structure shown on page 2, line 15 for the compound is unclear as the substituents carbon #3 and carbon 4, carbon #3 should be CH₂OH and carbon #4 should be H.
- (2) Claim 53 is drawn to a method comprising diagnosing in a patient a disease, then administering a drug to a patient.

Claim 66 is drawn to a method comprising diagnosing in a patient a disease, then administering a drug to a patient.

Claim 73 is drawn to a method comprising identifying in a person the possible presence of Syndrome X and then administering a drug to a patient.

(6) Grounds of Rejection to be Reviewed on Appeal

(1) 102(b) rejection of claims 53-73 over **Panossian** et al. Phytomedicine, Vol. 9, pages 598-605, **Wheelock** et al. US 5,833,994, **Babish** et al. WO 96/17605, **Nanduri** et al. US 6,410,590, **Babish** et al. US 2002/0077350. As evidenced by **Samaha** et al., Journal of the American heart association, 2006, Vol. 26, pages 624-630, **Vasantha** et al., Journal of biomolecular screening, 2006, Vol. 11, pages 959-967, and web page from NIH definition Syndrome X (<http://familydoctor.org/online/famdocen/home/common/heartdisease/basics/826.p rinterview>).

(7) Grouping of claims

The rejections of claims 53-73 stand or fall together because appellants' brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192 (C)(7).

(8) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior art of record

Panossian et al. Phytomedicine, Vol. 9, pages 598-605.

Wheelock et al. US 5,833,994.

Babish et al. WO 96/17605.

Nanduri et al. US 6,410,590.

Babish et al. US 2002/0077350.

(10) New Articles

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Samaha et al., Journal of the American heart association, 2006, Vol. 26, pages 624-630.

Vasantha et al., Journal of biomolecular screening, 2006, Vol. 11, pages 959-967.

<http://familydoctor.org/online/famdocen/home/common/heartdisease/basics/826.p rinterview>.

(11) Grounds of Rejection

Claims 53-73 are rejected under 102(b). This rejection is set forth in a prior Office Action, mailed on 01/19/2007 and 03/16/2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

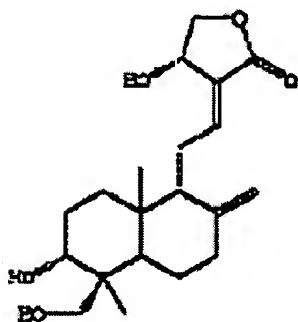
(a) Claims 66-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Panossian et al., Phytomedicine, Vol. 9, pages 598-605. on page 608, the compound Andrographolide is encompassed by the instant compound claimed with the same activity i.e. induce tumor necrosis factor-alpha (TNF- α) and Interleukin-2, see summary. Therefore, the instant claims are anticipated with the same utility by Panassian et al.

(b) Claims 53, 65-66, and 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Wheelock et al., US 5,833,994. On column 21, lines 49-52, the compound Andrographolide which is extracted from the Andrographis Paniculata plant which has activity as treating AID's, anticancer, HIV, viral infection.

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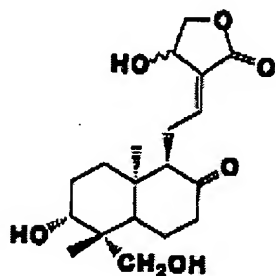
(c) Claims 53, and 64-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Babish et al., WO 96/17605. On page 16, lines 15-16, the compound Andrographolide is encompassed by the instant compound claimed with the same activity i.e. Alzheimer, AIDS, see page 9, lines 12-24. Therefore, the instant claims are anticipated with the same utility by Babish et al.

(d) Claims 53-63,66, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Nanduri et al., US 6,410,590. On column 8, lines 10-25, the compound of formula (II)



anticipates the instant compound claimed which is obtained from the same family of plant *Andrographis Paniculata* (column 2) having the activity such as autoimmune diseases, AIDS, HIV, and cancer. Therefore, since the structure and the name is the same as the instant claims, there is no difference.

(e) Claims 53-73 are rejected under 35 U.S.C. 102(b) as being anticipated by Babish et al., US 2002/0077350. On sheet 2, the compound [C3], Andrographolide



is encompassed by the instant compound claimed with the same activity i.e. antihyperlipidemia (one factor of Syndrome X), see page 6, paragraph 49, anti-inflammatory, Alzheimer disease, AIDS, see page 1, paragraph 1-5. Therefore, the instant claims are anticipated with the same utility by Babish et al.

(12) Response to Argument

1) **The summary of Appellants** the Examiner's Answer relies on art, which is not of record in this case. The Examiner relies on Samaha et al., on Vasantha et al., and on "NIH website".

2) **It is Examiner's position that** the references show only the connection between the (PPAR- γ) and interleukin or NF-kB or TNF- α . The references are only the support documents.

Respectfully submitted,

Niloofar Rahmani
Assistant Examiner
Art Unit 1625

Conferees:

Margaret D. Seaman
Primary Examiner
Art Unit 1625